

# Interim Government Energy Aggregation Program Standards

## SECTION 1. SCOPE

These standards shall apply to all government aggregators and TPSs.

## SECTION 2. DEFINITIONS

The following words and terms, when used in these standards shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the “Electric Discount and Energy Competition Act” (P.L.1999, c. 23)

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the Board.

"Basic generation service" means electric generation service that is provided, pursuant to section 9 of the Act, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board.

“BGS” means basic generation service as defined in the Act or herein.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Contracting unit” means a unit of local government as defined in NJSA 40A:11-2(1) and NJSA 18A:18A-2a.

“Cooperative pricing system” means a purchasing system pursuant to N.J.A.C. 5:34-7.1 et seq. in which the lead agency advertises for bids, awards a master contract to a successful vendor providing for its own needs and for the prices to be extended to the registered members, and notifies them of the bid prices awarded. The registered members then contract with the vendor for their own needs, subject to the specifications of the master contract.

“Electric generation service” means the provision of retail electric energy and capacity which generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of this act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the Act.

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that transmits and distributes electricity to end users within this State.

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services.

"Gas public utility" means a public utility, as that term is defined in R.S.48:2-13, that distributes gas to end users within this State.

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services.

"Gas supplier" means a person that is duly licensed pursuant to the provisions of this act to offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the Board pursuant to subsection k. of section 10 of this act.

"Gas supply service" means the provision to customers of the retail commodity of gas, but not include any regulated distribution service.

"Government aggregator" means any government entity subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written contract with a

licensed electric power supplier or a licensed gas supplier for: (1) the provision of electric generation service, electric related service, gas supply service, or gas related service for its own use or the use of other government aggregators; or (2) if a municipal or county government, the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction.

“Government energy aggregation program” means a program and procedure pursuant to which a government aggregator enters into a written contract for the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction.

“Lead agency” means the contracting unit which is responsible for the management of the cooperative purchasing system (N.J.A.C. 5:34-7.1 et seq.).

“LDC” means local distribution company and applies to electric and/or gas public utilities, as defined in the Act.

“Limited government energy aggregation program” means a program and procedure pursuant to which a government aggregator that is a municipality or a county provides for the aggregation of residential customers without the initial, affirmative, voluntary written consent of residential and business customers for electric generation service or gas supply service, either separately or bundled.

“Ratepayer Advocate (RA)” means the Division of Ratepayer Advocate or any successor agency.

“Regional electric generation service and/or gas supply service cooperative pricing system” means a new cooperative pricing system composed of two or more registered cooperative pricing systems and the participating local contracting units which have agreed to participate in the cooperative purchase of electricity generation service or gas supply service.

“Registered member” means a contracting unit which has been approved by the Director of the Division of Local Government Services for participation in a cooperative purchasing system pursuant to N.J.A.C. 5:34-7.2.

“System membership” or “membership” or “member” means the terms are set forth in Cooperative Purchasing Rules (N.J.A.C. 5:34-7.1 et seq.).

“TPS” means a licensed third-party supplier and applies to electric power supplier and/or gas supplier as those terms are defined in the Act or herein or, or a person acting on behalf of such supplier.

### **SECTION 3 GENERAL PROVISIONS**

### 3.1 Forms of Local Government Energy Aggregation Programs

a. A government aggregator may obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities or with other government aggregators.

b. A government aggregator that is county or municipality may contract for electric generation service or gas supply service, either separately or bundled, for business and residential customers within its territorial jurisdiction.

c. A government aggregator that is a municipal or county government aggregator may combine the electric generation service or gas supply service of its own facilities or other government aggregators with that of business and residential customers.

d. A government aggregator is not precluded from aggregating its own accounts for regulated utility services, including basic generation service or basic gas supply service.

### 3.2 Other Government Aggregators

a. Neither State government or any State independent authority or State college is precluded from exercising authority to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities on an aggregated basis.

b. Neither an interstate authority or agency is precluded from exercising authority to obtain electric generation service or gas supply service, either separately or bundled, for its own facilities in this State, including tenants in this State and other utility customers in this State at such facilities, on an aggregated basis.

i. Such interstate authority or agency shall not be deemed a public utility pursuant to R.S. 48:1-1 et seq.; however, such interstate authority or agency is not exempt from paying the market transition charge or its equivalent, imposed pursuant to section 13 of the Act, the transition bond charge or its equivalent imposed pursuant to section 18 of the Act and the societal benefits charge or its equivalent imposed pursuant to section 12 of the Act.

c. "New Jersey School Boards Association" is authorized to serve as a government aggregator to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, pursuant to "Public School Contracts Law" for those members wishing to voluntarily participate

### 3.3 Implementation of Government Energy Aggregation Programs

No government aggregator shall implement the provisions of sections 42 through 45 of the Act prior to the effective date of these interim government energy aggregation program

standards.

### 3.4 Local Government Energy Aggregation Program Conditions

a. A government aggregator may enter into a contract for the purchase of electric generation service or gas supply service only from TPSs.

b. A government aggregator is permitted to contract for electric generation service, electric related service, gas supply service or gas related service for its own facilities or with other government aggregators pursuant to “Local Public Contracts Law”, “Public School Contracts Law”, “County College Contracts Law” or “Interlocal Services Act”, as applicable.

## **SECTION 4 BIDDING SPECIFICATIONS**

### 4.1 General provisions affecting government aggregators

a. The bid specifications must be drafted so that the government aggregator’s facility electric generation service or gas supply service requirements are clearly distinguished from residential and business customer electric generation service or gas supply service requirements.

b. Bid specifications issued by a cooperative pricing system must reflect whether a member not providing initial estimated electric generation service or gas supply service requirements and a contracting unit which becomes a member after the contract has been awarded, may utilize such contract with the approval of the lead agency and the selected TPS.

c. Notwithstanding any of the restrictions or conditions set forth in these standards, the lead agency shall determine prior to the solicitation of bids whether the electric generation service or gas supply service estimates submitted by a duly registered member of the system shall be considered firm and binding or a member may withdraw its electric generation service or gas supply service estimate even after a TPS has been selected.

i. The mechanism for determining the systemwide consensus shall be the responsibility of the lead agency.

d. Bid specifications are precluded from including provisions for “take or pay” contracts, where the government aggregator commits to pay for a specified level of electric generation service or gas supply service, whether or not the specified level of electric generation service or gas supply service is actually utilized by the government aggregator or participants in a cooperative pricing system.

### 4.2 Preliminary Costs

a. For contract provisions for the allocation of costs between the selected TPS and the government aggregator, the bid specifications may provide for the reimbursement of preliminary costs incurred by the aggregator.

b. When reimbursement is required, the bid specifications must describe the items for which reimbursement is being requested, an estimate thereof and the maximum amount to be reimbursed by the TPS.

c. The bid specifications must reflect that preliminary costs shall not be passed through to the TPS without initially being paid by the government aggregator.

d. All reimbursements shall be based upon invoices or vouchers authorized and paid by the government aggregator.

e. All expenditures and reimbursements of preliminary costs shall be budgeted in accordance with the provisions of the Local Budget Law (NJSA 40A:4-1 et seq.) and procured pursuant to the Local Public Contracts Law (NJSA 40A:11-1 et seq.) and these standards.

f. The government aggregator shall not authorize the expenditure of funds without a duly approved budget appropriation.

g. No contracts for the procurement or provision of goods or services to be reimbursed by a TPS shall be entered into without an encumbrance to a budgetary line item.

h. Reimbursements shall be treated as miscellaneous revenue, not anticipated unless revenue has been provided for in the budget.

i. For boards of education, the issuance of any contracts or other incumbrances or expenditure of funds related to reimbursable preliminary costs may not be made without the appropriate board action to ensure that sufficient appropriation balances exist for the affected line items.

ii. Reimbursement shall be treated as a reduction of expenditures if received in the same year of the expenditures. If reimbursement is received in a fiscal year subsequent to the expenditure, it shall be treated as miscellaneous income.

i. Preliminary costs shall be limited to the costs the government aggregator incurred in preparing for government energy aggregation programs in the areas of developing energy bid specifications; ordinance preparation; related professional services; work up to and including the preparation and distribution of the first notice; initial round of citizen education; and activities related to the use of a government aggregator's resources, equipment or employees.

## **SECTION 5 COOPERATIVE PURCHASING OF ELECTRIC GENERATION SERVICE AND/OR GAS SUPPLY SERVICE**

### 5.1 Cooperative purchasing of electric generation service and/or gas supply service

a. Two or more local contracting units may join together to form a cooperative pricing system for the sole specific purpose of purchasing electric generation service and/or gas supply service pursuant to the Act or an existing registered cooperative purchasing system may add electric generation service and/or gas supply service as a commodity to be purchased, pursuant to N.J.A.C. 5:34-7.29.

b. Two or more duly registered cooperative pricing systems may join together for the purpose of purchasing electric generation service and/or gas supply service as a regional electric generation service and/or gas supply service cooperative pricing system.

i. The registered membership of each cooperative pricing system shall be deemed to be a member of the regional electric generation service and/or gas supply service cooperative pricing system upon submission to the Director of the Division of Local Government Services a list of the membership of each individual cooperative pricing system.

ii. Registration of the regional electric generation service and/or gas supply service cooperative pricing system shall be pursuant to the requirements set forth in N.J.A.C. 5:34-7.5.

c. When a municipality which has aggregated its residents or business customers for gas supply service or electric generation service becomes a member of a regional electric generation service and/or gas supply service cooperative, it shall simultaneously notify the lead agency of the cooperative pricing system of which it is a member and the lead agency of the regional electric generation service and/or gas supply service cooperative pricing system of the participation of its residents or businesses customers and their respective electric generation service and/or gas supply service supply requirements.

d. A cooperative pricing system undertaking energy aggregation in which the lead agency is not a county or municipality and the membership includes a mix of local contracting units including municipalities and counties, shall not include municipalities and counties who seek to provide electric generation service and/or gas supply service to residents and businesses.

e. At the discretion of the lead agency for any electric generation service and/or gas supply service cooperative pricing system or a regional electric generation service and/or gas supply service cooperative pricing system, participants shall file such reports, forms or documents designated by the lead agency, setting forth the use and expenditures related to contracts executed by the participants of the electric generation service and/or gas

supply service cooperative purchasing system.

## **SECTION 6 PROGRAM STANDARDS**

### **6.1 Required Contract Provisions for Government Energy Aggregation Programs**

a. A contract for a government energy aggregation program between a government aggregator and TPS shall include the following provisions:

- (1) the specific responsibilities of the government aggregator and TPS;
- (2) charges, rates, fees, and formulas used to determine costs to be charged to consumers electing to receive electric generation service or gas supply service under the government energy aggregation program;
- (3) methods and procedures the TPS will utilize to solicit the affirmative and voluntary written consent of the participating consumer, including but not limited to consumer education;
- (4) proposed terms and conditions of standard contract between energy consumers and TPS, which shall comply with the Board's consumer protection standards, and must specifically include, but not be limited to:
  - (a) terms;
  - (b) allocation of risks between the TPS and energy consumers receiving service(s);
  - (c) allocation of risks beyond the control of the parties to the contract;
  - (d) default and remedies;
  - (e) allocation of penalties between the TPS and government aggregator of which may be imposed by the LDC on a TPS for imbalances and/or non-performance by the TPS;
- (5) clearly identify the use of government aggregator resources, equipment, systems or employees associated with such services;
- (6) term (duration) of the contract with the government aggregator;
- (7) a provision indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a residential customer and the TPS;
- (8) provision for a performance bond, if so required by the government aggregator;
- (9) the procedures to ensure that participation is the result of affirmative choice,

as evidenced by written signature and consistent with Board-adopted standards;

(10) a provision that the TPS will comply with Board-adopted consumer protection standards;

(11) such other terms and conditions as the government aggregator may deem necessary.

## 6.2 Award of Contract

a. The award of a contract for a government energy aggregation program must be based upon most advantageous, price and other factors considered or to the lowest responsible bidder for government to government systems, as appropriate.

b. When a contract includes electric generation service to residential customers, the contract shall only be awarded if the TPS rate charged results in a total rate which is lower than the total rate a customer would pay under the State-mandated rate reductions pursuant to section 4. of the Act and basic generation service price pursuant to section 9. of the Act, respectively, as determined by the Board, throughout the duration of the contract.

## 6.3 Fees and Political Contributions

a. A TPS cannot provide concession fees, finders' fees or other direct monetary benefits to the government aggregator.

b. A TPS is subject to prohibitions against political contributions in compliance with R.S.19:34-45.

## 6.4 Limitation on Contracts

A government aggregator may enter into only one electric generation service contract and only one gas supply service contract for consumers within its territorial jurisdiction during a contract duration, such as one contract for either or both services but not two or more contracts for the same service.

## 6.5 Conditions for County Government Aggregation

a. A county government, acting as a government aggregator, shall not enter into a contract for an energy aggregation program in competition with any existing government aggregator contract within its territorial jurisdiction unless one or more constituent municipalities adopt an ordinance authorizing such action.

b. A county government energy aggregation program may be only conducted for residential and business customers within its constituent municipalities that approved participation therein.

## **SECTION 7 GOVERNMENT ENERGY AGGREGATION PROGRAMS**

### **7.1 Conditions for Providing Government Energy Aggregation Programs**

a. A government aggregator that chooses to provide a government energy aggregation program must provide residential and business customers the opportunity to participate on a voluntary basis and in a clear and consistent manner.

b. Any residential and business customer electing to participate must do so affirmatively and voluntarily, only after the terms and conditions of the program have been clearly and plainly articulated in writing to the customer prior to a signature authorizing participation.

c. Residential and business customers who do not voluntarily and affirmatively agree to participate, via written signature, may contract with any supplier authorized by law to provide retail services.

### **7.2 Conditions for Providing Limited Government Energy Aggregation Programs**

a. A government aggregator that is a municipality or county government may, notwithstanding provisions of section 44 of the Act or Section 7.1 of these standards, operate a limited government energy aggregation program which aggregates electric generation service or gas supply service without the initial, affirmative, voluntary, written consent of residential customers for such service(s), either separately or bundled, in accordance with the following procedures outlined in b. below.

b. As part of the bid specifications package, electric generation service or gas supply service for residential customers may be aggregated together with electric generation service or gas supply service, either separately or bundled, for the government aggregator's own facilities or with other government aggregators and such bid specifications may also combine the electric related or gas related service for government facilities provided that:

(1) the governing body adopts an ordinance (municipality) or a resolution (county) indicating its intent to solicit bids for electric generation service or gas supply service, either separately or bundled, without affirmative, voluntary, written consent of residential customers, which ordinance or resolution must be approved by majority plus one vote of its full membership;

(2) within 15 days of said adoption, the governing body must mail a written notice to each residential customer advising them of their individual right to affirmatively decline

participation;

(3) the governing body must use a Board-approved form of notice, which shall include a check off and signature line to indicate the customer's desire to decline participation;

(4) the governing body must allow its residential customers 30 days, from the postmark date, to affirmatively decline participation in writing by returning the Board-approved form of notice;

(5) upon expiration of the 30 day period, the governing body shall determine the number and identity of its residential customers who did not affirmatively decline participation, and may commence public bidding.

### 7.3 Bidding and Award of Contract Process for Limited Government Energy Aggregation Programs

a. The governing body shall commence public bidding pursuant to the "Local Public Contracts Law," P.L.1971,c.198 (C.40A-11-1 et seq.) to receive bids from licensed TPSs for electric generation service or gas supply service, either separately or bundled, for those residential customers who did not affirmatively decline participation and electric generation service, electric related service, gas supply service or gas related service , either separately or bundled, for the government aggregator's own facilities, or for use of other government aggregators.

b. The governing body shall evaluate bids received, and shall select a licensed electric power supplier or gas supplier based upon the most advantageous, price and other factors considered.

i. The governing body shall only select a licensed electric power supplier if the TPS rate charged results in a total rate which is lower than the total rate a customer would pay under the State-mandated rate reductions pursuant to section 4. of the Act and basic generation service price pursuant to section 9. of the Act, respectively, as determined by the Board, throughout the duration of the contract.

c. The governing body shall enter into a written agreement with the selected TPS, which agreement shall include:

(1) the contract for a government aggregator's own load;

(2) a contract form in compliance with and includes the requirements of Section 6, subsection 6.1 of these standards; and

(3) a provision that such written agreement shall not become effective until proposed contract in (2) above is approved by the Board.

d. After entering into a written agreement with the selected TPS, the governing body shall submit to the Board, for approval, the proposed standard contract to be entered into between the selected TPS and each residential customer who affirmatively consents to enter into such contract.

e. The governing body shall submit an application to the Board for approval of a contract for a limited government energy aggregation program which shall include the following information:

i. a copy of the bid specifications which was issued pursuant to Section 4 of these standards to solicit bids from licensed TPSs, accompanied by an index which indicates precisely where in the aforementioned each provision required in Section 6, subsection 6.1 of these standards is set forth;

ii. a copy of the written agreement, accompanied by an index which indicates precisely where in the written agreement each provision required in Section 6, subsection 6.1 and Section 7, subsection 3.c.(3) of these standards is set forth;

iii. the TPS' name and license number;

iv. a detailed customer bill comparison which demonstrates for a residential customer: for 250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh for each month of the year, the customer's total electric bill under the proposed contract with the customer's total electric bill at the same electricity usage levels for each month of the year if the customer were to remain on basic generation service; and for 50 therms, 100 therms, 150 therms and 200 therms for each month of the year, the customer's total gas bill under the proposed contract with the customer's total gas bill at the same gas usage levels for each month of the year if the customer were to remain on basic gas supply service;

v. a copy of the proposed form of notice, consistent with I.(1) below, which will be utilized to solicit customer consent to the energy aggregation program;

vi. if a resubmission, noted deficiency(ies) corrected; and

vii. other items as the Board deems necessary and which will be specified pursuant to Board Order.

f. Board shall determine whether the submission is complete within 30 days receipt thereof.

(1) If the submission is determined to be incomplete, the Board shall return the submission forthwith, with notice of the specific deficiency(ies).

(2) The governing body shall correct specific deficiency(ies) and resubmit.

g. Upon being notified by the Board that the submission is complete, the governing body or its designee shall provide a copy of completed submission to the Ratepayer Advocate (RA).

h. The RA shall recommend to the Board to approve, modify or reject submission within 45 days of receipt thereof.

i. The Board shall approve, reject or modify submission within 60 days of the submission being deemed complete.

j. Upon receipt of Board approval, governing body, or its designee, shall authorize the selected licensed TPS to solicit the affirmative and voluntary written consent of any residential customer who did not initially affirmatively decline to participate.

k. The selected licensed TPS shall be subject to section 37 of the Act and Board-adopted consumer protection standards.

l. The governing body shall notify all residential customers of their right to decline continued participation if there is a change in TPS or price.

(1) the governing body must use Board-approved form of notice; and

(2) the governing body must provide certification of said notification to the Board.

m. The county government aggregator may only implement a program pursuant to 43.f. of the Act and Section 6, subsection 6.5 of these standards.

n. The provisions of section 45 of the Act and Section 7, subsections 7.2 and 7.3 of these standards shall only apply to residential customers.

o. Nothing in section 45 of the Act or Section 7, subsection 7.2 of these standards shall preclude a limited government aggregation program from including business customers pursuant to section 44 of the Act or Section 7, subsection 7.1 of these rules.

**Limited Government Energy Aggregation Program Notice**

Dear \_\_\_\_\_ :

This is to inform you that, as provided for under the State's "Electric Discount and Energy Competition Act" (P.L.1999, c.23), the (name) has chosen to enter into a contract(s) for electricity generation service (or gas supply service) on behalf of our residential or business constituents unless you decline to participate. This is known as a "Limited Government Energy Aggregation Program". This notice is being sent to you pursuant to State law.

Under the law, you can choose one of the following options:

- ! You can remain a customer of your present electric (and natural gas) public utility.
- ! You can choose to participate in the (name) municipal energy aggregation program and sign-up with the supplier chosen by a public bid by the (name).
- ! You can shop for and negotiate a contract with any other power supplier (or gas supplier) on your own.
- ! You can participate in other aggregation groups that may contact you.

Once a (name) contract with an electric power supplier (or gas supplier) is approved by the New Jersey Board of Public Utilities, you will be contacted by that supplier with an offer to voluntarily participate in the program. At that time, you will be asked to sign a contract. ***You will be under no obligation to enter into a contract and may decline to participate at that time.*** Under the State law, the price for electricity ***must be lower*** than the rate charged by your electric public utility.

If you have not received detailed information or have additional questions concerning this program, please contact (fill in organization, name, address, e-mail as appropriate). If you wish to decline participation in the (Name) Energy Aggregation Program at this time, please complete, sign and return the bottom of this Notice in the enclosed envelop provided by (date).

Sincerely,

Mayor

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I do not wish to participate in the (Name) Limited Energy Aggregation Program.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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